

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

MARY T. THOMAS, *et al.*,

Plaintiffs,

v.

MARCI ANDINO, *et al.*,

Defendants.

Case No. 3:20-cv-01552-JMC

**Plaintiffs' Motion to Allow Video
Testimony**

Plaintiffs Mary Thomas, Nea Richard, The Family Unit, Inc., and South Carolina State Conference of the NAACP (collectively, "Plaintiffs") submit this motion to allow the testimony of Brenda C. Murphy, Nea Richard, Brenda C. Williams, Sharon Bell, and Dorothy Scott by videoconference due to the ongoing COVID-19 pandemic.

INTRODUCTION

Trial in this matter begins on September 22, 2020. Plaintiffs intend to call the following fact witnesses: Mary Thomas, Brenda C. Murphy, Nea Richard, Brenda C. Williams, Sharon Bell, Dorothy Scott. Plaintiffs also intend to call experts Dr. Courtney D. Cogburn, Dr. Willaim S. Cooper, Dr. Arthur L. Reingold, and John C. Ruoff. All intend to testify by video due to ongoing concerns related to the COVID-19 pandemic. Defendants have informed Plaintiffs they do not oppose Mary Thomas or the expert witnesses testifying by video, but they oppose video testimony from Brenda C. Murphy, Nea Richard, Brenda C. Williams, Sharon Bell, and Dorothy Scott.

ARGUMENT

The COVID-19 pandemic continues to seriously affect daily life in South Carolina. In just the past week, the average number of new cases reported daily in South Carolina has increased by 23% from the average two weeks earlier.¹ Coming into contact with another person outside one's household still poses serious health risks, especially for those in high risk categories. Because of this serious danger, Plaintiffs intend to call Brenda C. Murphy, Nea Richard, Brenda C. Williams, Sharon Bell, and Dorothy Scott to testify by videoconference.

The Federal Rules of Civil Procedure set out the circumstances under which a witness may testify via video at trial. While Rule 43 states that “[a]t trial, the witnesses’ testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise,” it provides an exception for video testimony under certain circumstances: “[f]or good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.” Fed. R. Civ. P. 43(a).

As this Court recognized in a ruling just a week ago, a witness’s “concerns about testifying in person during the time of COVID-19 demonstrate good cause and compelling circumstances to allow [the witness] to testify at trial by videoconference.” *Sentry Select Ins. Co. v. Maybank Law Firm, LLC*, No. 5:15-CV-04984-JMC, 2020 WL 5441305, at *2 (D.S.C. Sept. 10, 2020); *see also In re RFC & ResCap Liquidating Tr. Action*, 444 F. Supp. 3d 967, 971–72 (D. Minn. 2020) (“Under the circumstances, COVID-19’s unexpected nature, rapid spread, and potential risk establish good cause for remote testimony. Indeed, one court faced with a request for a temporary restraining order addressing the movement of patients infected with COVID-19 considered the

¹ “South Carolina Covid Map and Case Count,” *The New York Times*, last accessed September 17, 2020, available at <https://www.nytimes.com/interactive/2020/us/south-carolina-coronavirus-cases.html>.

virus to pose a ‘threat of an immediate and irreparable injury.’”) (citation omitted). “[C]onducting a bench trial via videoconference satisfies the requirement that [] proceedings take place in open court.” *Gould Elecs. Inc. v. Livingston Cty. Rd. Comm’n*, --- F. Supp. 3d ---, No. 17-cv-1130, 2020 WL 3717792, at *3 (E.D. Mich. June 30, 2020).

Each witness fears the immediate and irreparable injury that COVID-19 poses. Their individual reasons for testifying by video, which were provided to Defendants’ counsel follow:

Witness	Characteristics why should appear remotely
Sharon Bell	Ms. Sharon Bell has diabetes and heart disease and is therefore at high risk of severe illness from COVID-19. She fears exposure to COVID-19 from leaving her home and wishes to avoid increased risk of exposure.
Brenda C. Murphy	Ms. Brenda C. Murphy is over the age of 65, which puts her at increased risk of severe illness from COVID-19, has multiple underlying health conditions, and wishes to avoid increased risk to exposure to COVID-19.
Nea Richard	Ms. Richard is aware that people have varying degrees of risk tolerances and take different safety precautions regarding COVID-19. Therefore, she avoids unnecessary travel to places that put her in close proximity to individuals she does not know.
Dorothy Scott	Ms. Dorothy Scott is over the age of 65 and has lupus. She is very concerned about her exposure to COVID-19 and does not want to appear in person at trial for that reason.
Brenda C. Williams	Dr. Brenda C. Williams is over the age of 65, has multiple underlying health conditions, and wishes to avoid potential exposure to COVID-19.

These legitimate concerns demonstrate good cause and compelling circumstances to allow all five witnesses to testify via videoconference at trial.

WHEREFORE, Plaintiffs respectfully request an order allowing the testimony of Brenda C. Murphy, Nea Richard, Brenda C. Williams, Sharon Bell, and Dorothy Scott at trial to be take via videoconference.

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Respectfully Submitted,

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*Motion for admission *Pro Hac Vice*
forthcoming